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## 410.01 Introduction

**Chapter 410** and **Chapter 411** describe the environmental review procedures that occur during the Design and Environmental Review phase of the WSDOT Transportation Decision-Making Process. Detailed guidance is given for the major steps in the environmental review process.

**Chapter 410** focuses on understanding NEPA/SEPA legislative authority, agency roles and responsibilities, and public involvement.

**Chapter 411** gives detailed guidance on the documents and procedures for each classification, and internal WSDOT procedures for environmental review.

Environmental analysis is done to some degree at each stage of the decision-making process. The first formal analysis occurs during project definition, with preparation of the Environmental Review Summary (**Section 310.05**). The most extensive analysis occurs during project design, for the purpose of preparing environmental review documents (e.g., environmental assessments/checklists and environmental impact statements) and permit applications. **Chapter 420** through **Chapter 480** give specific guidance for analysis of each of the environmental elements required by federal and state laws and regulations. Permit information is contained in **Part 5**.

### (1) **Abbreviations and Acronyms**

Abbreviations and acronyms used in **Chapter 410** and **Chapter 411** are listed below. Others are found in **Appendix A**.

CE	Categorical Exclusion (NEPA) or Categorical Exemption (SEPA)
CEQ	Council of Environmental Quality (federal)
CFR	Code of Federal Regulations
DCE	Documented Categorical Exclusion (NEPA)
DEIS	Draft Environmental Impact Statement
DNS	Determination of Non-Significance (SEPA)

\* Web sites and navigation referenced in this chapter are subject to change. For the most current links, please refer to the online version of the EPM, available through the ESO home page: <http://www.wsdot.wa.gov/environment/>

DS	Determination of Significance (SEPA)
EA	Environmental Assessment
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement
EPF	Essential Public Facilities
ERS	Environmental Review Summary
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact (NEPA)
GIS	Geographic Information System
IDT	Interdisciplinary Team
MDNS	Mitigated Determination of Non-Significance (SEPA)
NAT	Notice of Action Taken (SEPA)
NEPA	National Environmental Policy Act
NOI	Notice of Intent (NEPA)
ROD	Record of Decision (NEPA)
<u>SAFETEA-LU</u>	<u>Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users</u>
SEPA	State Environmental Policy Act

(2) **Glossary**

***Categorical Exclusion/Exemption*** – An action that does not individually or cumulatively have a significant environmental effect, as defined in NEPA/SEPA regulations, and is classified as excluded (NEPA) or exempt (SEPA) from requirements to prepare an Environmental Assessment/Checklist or Environmental Impact Statement.

***Council on Environmental Quality (CEQ)*** – An oversight council established within the Executive Office of the President with passage of the National Environmental Policy Act of 1969. The Council has been assigned the task of ensuring that federal agencies meet their obligations under NEPA. Its role is to advise and assist the President on environmental policy development; recommend strategies and oversee implementation; report, coordinate, support, interpret, and approve procedures; and issue guidance. Regulations are codified as 40 CFR 1500-1508.

***Cumulative Impact/Effect*** – Cumulative impacts from past actions or the incremental effect of the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time. For NEPA, see 40 CFR 1508.7. (See [Chapter 480](#) for guidance.)

***Direct Impact/Effect*** – A direct impact (or effect) is caused by the proposed action or alternative and occurs at the same time and place, most often during construction. Impacts may be ecological, aesthetic, historic, cultural, economic, social, or health-related. For example, a highway crossing a stream may directly impact its water quality, though such impacts can be mitigated. For NEPA, see 40 CFR 1508.8. (See [Chapter 480](#).)

***Discipline Report*** – A WSDOT report prepared by Regional Offices or Divisions to document environmental studies and investigations. The discipline reports form the basis of the Environmental Impact Statement.

***Environmental Document*** – Includes Environmental Assessments (NEPA), SEPA Threshold Determinations (Determination of Significance or Determination of Non-Significance) and associated Environmental SEPA Checklists, Draft and Final EISs, Section 4(f) Evaluations, Section 106 Reports, Environmental Justice Reports and other documents prepared in response to state or federal environmental requirements.

***Environmental Review*** – Consideration of environmental factors as required by NEPA and SEPA. The “environmental review process” is the procedure used by agencies and others to give appropriate consideration to the environment in decision making.

***Indirect Impact/Effect*** – Indirect impacts (or effects) are caused by the proposed action or alternative and are later in time or farther removed in distance, but still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. (Note: “Indirect” is defined somewhat differently under NEPA and ESA rules.) For NEPA, see 40 CFR 1508.8. See also [Chapter 480](#).

***Mitigation*** – (1) Avoiding the impact altogether by not taking a certain action or parts of an action, (2) minimizing impacts by limiting the degree of the action, (3) rectifying the impact by repairing or enhancing the affected environment, (4) reducing or eliminating the impact over time, (5) compensating for the impact by replacing or substituting resources or environment, or (6) monitoring the impact and taking appropriate corrective measures. Also referred to as “mitigation sequencing”. For NEPA, see 40 CFR 1508.2. For SEPA, see WAC 197-11-768.

***Project Description*** – A narrative written by the proponent to describe the project proposal. It may include explanations of the existing physical, environmental, social, and economic setting in which the proposed project is situated, a legal description of the location, and an explanation of the intended improvements.

***Responsible Official*** – Official of the lead agency who has been delegated responsibility for complying with NEPA/SEPA procedures. See [Section 410.05](#) for identification of the WSDOT responsible official.

***Scoping*** – Formal scoping for an EIS includes identifying the range of proposed actions, alternatives, environmental elements and impacts, and mitigation measures to be analyzed in an environmental document. Public and agency scoping meetings are generally associated with this activity for NEPA scoping activities. (SEPA does not require a public hearing during the SEPA scoping for an EIS.)

***Secondary Effect/Impact*** – Same as indirect effect under NEPA.

***Significant Impact*** – The significance of potential impact on the natural or built environment depends upon context, setting, likelihood of occurrence, and severity, intensity, magnitude, or duration of the impact. WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

**Threshold Determination** – This determination by the responsible official of the lead agency is part of the SEPA process. This decision determines if an EIS is required; if so a Determination of Significance is issued. If project impacts are not significant (i.e. requiring an EIS), a Determination of Non-Significance is issued with an environmental checklist. A Mitigated Determination of Non-Significance results in an expanded environmental checklist with increased emphasis on the mitigation of project impacts.

## 410.02 **Applicable Statutes and Regulations**

This section lists the primary statutes and regulations applicable to environmental review. See [Appendix D](#) for a list of statutes referenced in the EPM.

### **(1) National Environmental Policy Act (NEPA)**

The National Environmental Policy Act (NEPA) was signed by President Nixon in January 1970 as the “national charter for protection of the environment” (PL 91-190). It was enacted to ensure that information on the environmental impacts of any federal action is available to public officials and citizens before decisions are made and before actions are taken.

The intention of NEPA was stated as follows in the Council on Environmental Quality NEPA Regulations (40 CFR 1500-1508): “Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.” (40 CFR 1500.1(c)).

Under NEPA, the Congress directs federal agencies to integrate in their planning and decision-making consideration of the natural and social sciences, environmental amenities and values, and design arts along with economic and technical concerns. NEPA is a broad-reaching mandate for federal agencies to work together with state, local, and tribal governments, public and private organizations, and the public, to achieve and balance national social, economic, and environmental goals while accomplishing their missions.

Federal agencies are required to integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

NEPA implementing regulations applicable to all federally aided projects were developed by the Council on Environmental Quality (CEQ) and are codified as 40 CFR 1500 – 1508, Regulations for Implementing the Procedural Provisions of NEPA. FHWA regulations applicable to federally aided highway projects are codified as 23 CFR 771, Environmental Impact and Related Procedures.

The full text of NEPA (42 USC 4321 et seq.), CEQ implementing regulations (40 CFR 1500-1508), and other guidance is online at:

 <http://www.whitehouse.gov/ceq/>

Click on NEPA.net.

Or by direct link:

 <http://ceq.eh.doe.gov/nepa/nepanet.htm>

The American Association of State Transportation Officials maintains a Center for Environmental excellence that provides a very useful one-stop source of environmental information for transportation professionals. The direct link is:

 <http://environment.transportation.org/indexnew.asp>

FHWA environmental impact and related regulations (23 CFR 771) are at:

 <http://www.fhwa.dot.gov/>

Click on Legislation and Regulations, then FHWA Directives and Policy Memorandums, then Federal-Aid Policy Guide, then Title 23 CFR, then 771.

Or by direct link:

 <http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr0771.htm>

For FHWA policy and other guidance on Transportation Project Development and NEPA:

 <http://environment.fhwa.dot.gov/>

Click on Project Development, then NEPA Implementation.

Or by direct link:

 <http://environment.fhwa.dot.gov/projdev/PDimplement.htm>

(2) **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

SAFETEA LU is the 2005 national transportation bill that affects many aspects of the NEPA environmental review and documentation process for transportation projects. Section 6002 of the bill includes provisions that establish:

- A new coordination and public input process for developing NEPA EISs.
- A new category of “Participating Agencies”.
- A 180-day appeal period for NEPA and other federal project-related actions.

The new environmental review process applies to highway, public transportation capital, and multimodal projects. It is mandatory for all EISs that published a Notice of Intent (NOI) after August 11, 2005 and optional for EAs, at the discretion of the Secretary. Currently, it is anticipated that it will only be applied to EIS projects in Washington State.

The process also includes new obligations for a public comment process for project Purpose and Need and for project Alternatives, and it requires the development of a coordination plan and schedule that must be provided to all

“Participating Agencies” and made available to the public. The lead agency must invite all interested agencies to be “Participating Agencies” in NEPA document preparation. Unless an agency specifically declines it will be a Participating Agency. Invited federal agencies may decline if they have no jurisdiction, expertise or intent to comment. Participating agencies may also be a “Cooperating Agency”.

Section 6002 of SAFETEA LU also adds a procedure for establishing a 180-day statute of limitations on legal challenges under NEPA and challenges to other project-related federal actions such as the issuance of permits. The 180-day appeals clock starts with publication of a notice in the Federal Register that a permit, license, or approval action is final. This provision is effective immediately and may be exercised retroactively whether or not the new environmental review process under Section 6002 was followed.

This information regarding SAFETEA-LU is intended primarily to inform projects that these new federal environmental review processes exist. It does not cover all environmental aspects of the highway bill. Additional guidance regarding the new environmental review processes will be developed in early 2006, and will be made available at:

 <http://www.wsdot.wa.gov/environment/compliance/default.htm>

In the interim, projects are encouraged to contact the Environmental Services Office for additional information, as necessary. Please contact Phil KauzLoric at (360) 705-7486 or via e-mail at [KauzLop@wsdot.wa.gov](mailto:KauzLop@wsdot.wa.gov). The FHWA SAFETEA-LU web site has additional information and may be accessed at:

 <http://www.fhwa.dot.gov/safetealu/>

**(3) State Environmental Policy Act (SEPA)**

**(a) Overview**

Washington’s State Environmental Policy Act (SEPA), adopted in 1971, directs state and local decision-makers to consider the environmental consequences of their actions. Implementing regulations, in the form of the SEPA Rules (WAC 197-11) establish uniform requirements for agencies to use in evaluating the possible adverse environmental impacts of a proposal. The process also allows review of possible project alternatives or mitigation measures that will reduce the environmental impact of a project. The *SEPA Handbook* gives specific guidance on the steps required for the SEPA environmental review process.

For WSDOT projects, the Transportation Commission and Department Environmental Policy Act Rules (WAC 468-12) integrate the policies and procedures of SEPA into the programs, activities, and actions of the department.

The SEPA (RCW 43.21C), SEPA Rules (WAC 197-11), *SEPA Handbook*, and forms, including the Environmental Checklist, are on Ecology’s web site:

 <http://www.ecy.wa.gov/>

Click on Services, then SEPA / Environmental Review.

Or by direct link:

<http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

The WSDOT SEPA procedures (WAC 468-12 as amended) are located at the Statute Law Committee web site:

<http://slc.leg.wa.gov/>

Click on WAC, then Title 468, then 468-12.

Or by direct link:

[http://search.leg.wa.gov/wslwac/WAC 468 TITLE/WAC 468 - 12 CHAPTER/WAC 468 - 12 Chapter.htm](http://search.leg.wa.gov/wslwac/WAC%20468%20TITLE/WAC%20468%20-12%20CHAPTER/WAC%20468%20-12%20Chapter.htm)

**(b) SEPA Appeals**

SEPA Rules (WAC 197-11-680) allow three types of appeals:

- Administrative procedural appeals.
- Administrative substantive appeals (if both substantive and procedural appeals are allowed, they must be consolidated).
- Judicial appeals.

Anyone wishing to appeal a project must contact the lead agency and obtain information on that agency's appeal process. A Notice of Action Taken document submitted by the lead agency will begin the 21-day appeal period. (See [Section 411.07\(8\)](#) and [Section 411.08\(8\)](#).)

Agencies may provide an administrative review process for SEPA determinations prior to issuing a permit or approval. This review is limited to final threshold determinations or final EISs. (Final threshold determination means a determination of significance or a determination of nonsignificance after the close of the comment period.)

If a decision on a proposed action has been made, one appeal is allowed, including both the SEPA determination and the substantive decision (WAC 197-11- 680(3)).

The time frame for administrative appeals at the local level must be specified in the agency's SEPA procedures. If there is an appeal period for the action being taken (e.g., building permit or rezone), then the timing of the SEPA administrative appeal is the same as for appeal of the action.

If an agency has an administrative appeal process, it must be used prior to initiating judicial appeal. The judicial appeal combines appeal of the governmental action (permit/approval) and the SEPA document.

**(c) Appellate Court Decisions on SEPA**

The *SEPA Handbook* contains general information, discussions, and examples of the major steps of SEPA, including a summary of important appellate court decisions on SEPA. These decisions form the basis for interpretations of the SEPA Rules and the statutes. These decisions may be useful in resolving questions of law when the circumstances of a project are unusual.

## **410.04 Relationship of NEPA and SEPA**

### **(1) Projects Covered by NEPA and SEPA**

NEPA applies to decisions made with a federal nexus, meaning any involvement by federal agencies: federal permits, federal lands, or federal funding. Any federal project, or a private or state project funded by or requiring a permit from a federal agency, must meet NEPA requirements.

SEPA is intended to ensure that environmental values are considered during decision-making by state and local agencies. The policies and goals of SEPA apply to all branches of government in Washington, including state agencies, counties, cities, districts, and public corporations. Any government action may be conditioned or denied pursuant to SEPA.

Most WSDOT projects must comply with both NEPA and SEPA. For example, because a highway project involving a bridge over a major river requires a permit from the U.S. Army Corps of Engineers, it would have to meet NEPA requirements. As an action of a state agency, the project would have to meet SEPA requirements.

### **(2) Environmental Review Process**

**Figure 410-1** is a generalized flow chart illustrating the environmental review process, participants, and documentation. **Exhibit 411-1** gives more detail for NEPA Class I, II, and III projects. Critical path timelines for preliminary engineering of hypothetical Class I, II, and III projects are online via the ESO web site.

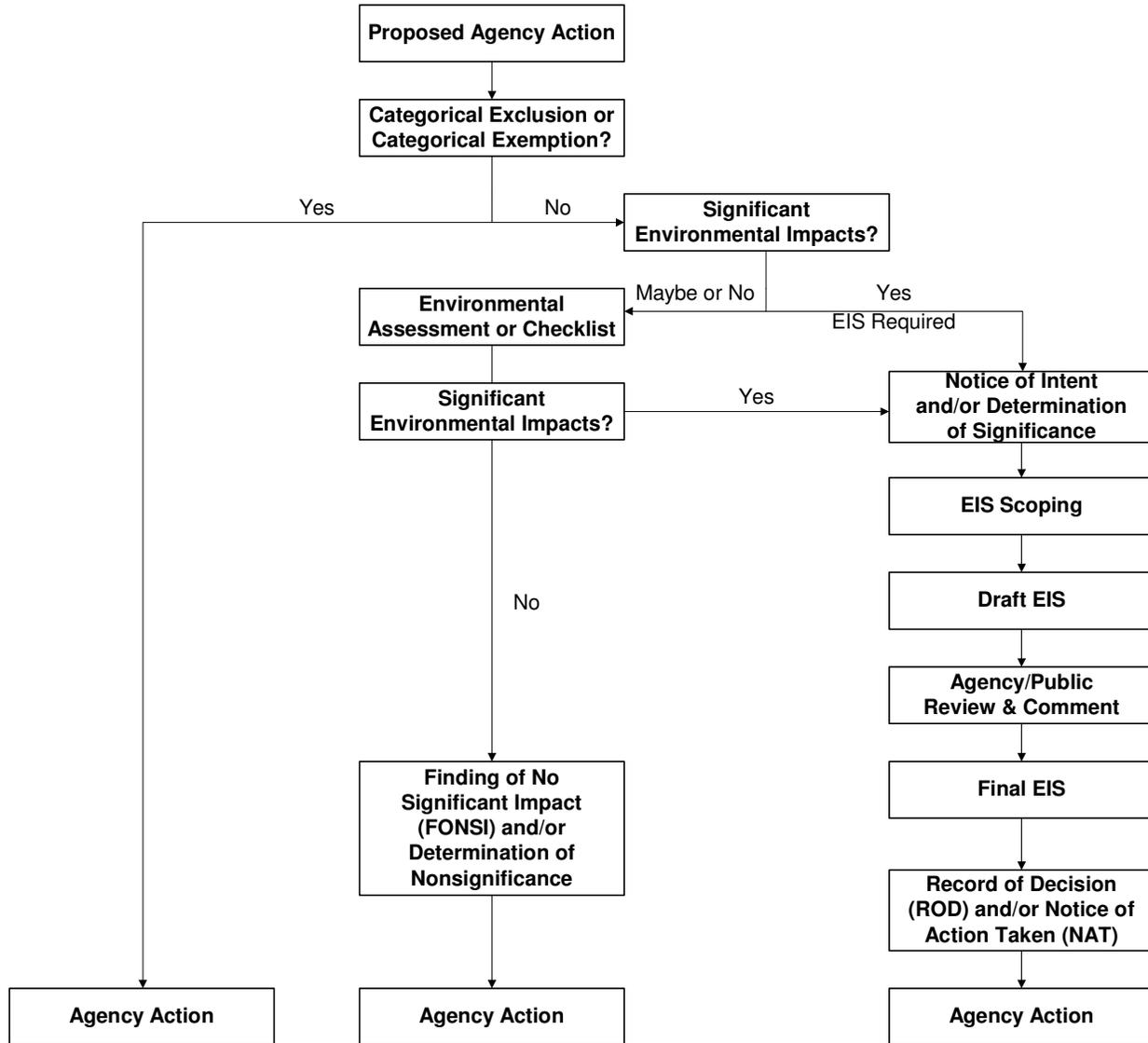
Four basic questions are common to both NEPA and SEPA.

- First, is the proposed action subject to either or both statutes?
- Second, will the project result in a probable significant adverse environmental impact, and is there an option of modifying the proposal or identifying mitigation that would allow the issuance of a Mitigated DNS? If the Responsible Official determines that the project will have such impacts, the agency proposing the action must prepare an EIS.
- Third, what elements of the environment are adversely affected by the project or other action and must be included in the EIS? The answer to this question determines the scope of the EIS.
- Fourth, what are the relative environmental impacts of the proposed action and alternatives? The comparative analysis of alternatives is the heart of the EIS.

While the above discussion encapsulates the substance of the NEPA/SEPA process, the actual steps are complex and require attention to the details. Deciding upon the proper level of environmental documentation and preparing adequate documents are critical. Both NEPA and SEPA grant discretion to the Responsible Official to decide how detailed the studies should be and what issues to cover. These steps are described in more detail in **Section 411.04** through **Section 411.09**.

After the NEPA/SEPA documentation has been reviewed and approved, the final step of implementation begins. Environmental conditions that may be imposed as mitigation through the NEPA or SEPA environmental review process and detailed mitigation further developed and refined during permitting both require implementation and monitoring during project construction and maintenance. These steps are discussed in more detail in [Part 6](#) and [Part 7](#).

**Figure 410-1: NEPA and SEPA Environmental Review Process Overview**



LEGEND	
<b>FEDERAL (NEPA)</b>	
CE	Categorical Exclusion
EA	Environmental Assessment
FONSI	Finding of No Significant Impact
EIS	Environmental Impact Statement
NOI	Notice of Intent
ROD	Record of Decision
<b>STATE OF WASHINGTON (SEPA)</b>	
CE	Categorical Exemption Checklist
DNS	Determination of Nonsignificance
DS	Determination of Significance
EIS	Environmental Impact Statement
NAT	Notice of Action Taken (optional)

Adapted from: *Background and Implementation of NEPA: Training Manual*, Chapter 1, Planning, Environmental, and Land Use Publications, Point Arena, CA. [www.solano.com](http://www.solano.com).

(3) **Adoption of NEPA Documents Under SEPA Rules**

The SEPA Rules allow an agency to adopt environmental analysis prepared under NEPA to satisfy SEPA requirements (WAC 197-11-610). In general, a NEPA EA may be adopted to satisfy requirements for a SEPA Determination of Nonsignificance (DNS) and a NEPA EIS may be adopted as a substitute for a SEPA EIS. Federal documents may also be incorporated by reference as support for issuance of a SEPA document (WAC 197-11-635).

(4) **Combined NEPA/SEPA EISs**

When a decision is made by WSDOT and FHWA to prepare a NEPA EIS, WSDOT usually prepares a joint NEPA/SEPA EIS. This has two advantages:

- The interests of SEPA agencies are raised in the proposed project because the document also pertains to their review authority under SEPA.
- Issues that may surface later under SEPA are identified earlier in the joint environmental process.

In the case of a conflict between the NEPA and SEPA regulations, the more stringent of the two is employed by WSDOT. There are cases where SEPA regulations have to be incorporated into the process on a parallel path, for example the Determination of Significance (DS). For details see [Section 411.07](#).

## 410.05 Agency Roles and Responsibilities

(1) **Responsibilities**

Depending on the project, a federal or state agency, tribe, or local government may serve in any of the roles described below.

(a) **Lead Agency**

The Lead Agency is responsible for ensuring that NEPA/SEPA requirements are met. For state transportation projects, WSDOT is the lead agency for SEPA (WAC 197-11-926) and FHWA is the lead agency for NEPA (23 CFR 771.109). Although FHWA is the NEPA lead agency for federal highway projects, NEPA allows the EIS document to be prepared by the state transportation agency so long as FHWA provides guidance and independently evaluates the EIS (42 USC 4332(2)(D)). FHWA and WSDOT also may decide to be joint lead agencies for NEPA. For local projects, a city or county is usually the lead agency for SEPA (WAC 197-11-926).

For Washington State Ferries (WSF) projects without FHWA funding, responsibility for ensuring compliance with NEPA is assumed by the U.S. Army Corps of Engineers.

Other federal agencies may also assume Lead Agency status in certain situations where they have project funding or permitting responsibilities.

The lead agency appoints a Responsible Official to formally approve NEPA and SEPA environmental documents.

(b) **Applicant**

Under the NEPA Rules, WSDOT is an applicant as the agency that initiates a project to FHWA, which has approval authority. The applicant

may do the actual work of preparing environmental documentation, which must be approved by the lead agency before release to the public.

**(c) Cooperating Agency**

Under NEPA, a cooperating agency has a vested interest in a proposed project for which the environmental document will be prepared. The agency might own needed property, issue required permits, or have special expertise in an affected element of the environment. The level of involvement varies with the project. Cooperating agencies participate in “scoping” a project during preliminary planning to identify potential environmental impacts, alternatives and mitigating measures, and required permits. They review and comment formally and/or informally on environmental assessments and environmental impact statements. They may also prepare special studies or share in the cost of the environmental documentation. Cooperating agencies may include federal and state resource agencies, local governments, tribal governments, and special districts. For regulatory guidance, see CEQ 40 CFR 1501.6, FHWA 23 CFR 771.109 and 771.111, WAC 197-11-408(2)(d), and WAC197-11-410(1)(d), WAC 197-11-724 and WAC 197-11-920.

**(2) Who Should be a Cooperating Agency?**

Under NEPA regulations, any federal agency with permitting authority must be asked to become a cooperating agency (23 CFR 771.109).

State resource agencies, tribes, and local agencies may be asked to be cooperating agencies if the lead agency decides they have special expertise or legal jurisdiction.

An agency with permitting authority can stop a project if it does not agree that environmental impacts have been adequately addressed. An actively participating cooperating agency can identify environmental factors it considers most critical, and work with FHWA and WSDOT to ensure that the NEPA document addresses these concerns. The agency can then adopt the FHWA/WSDOT EIS to satisfy the NEPA requirements for its particular jurisdictional responsibility.

**Table 410-1** lists examples of agencies with jurisdiction or expertise that may be asked to be cooperating agencies.

**(a) When to Request Participation**

WSDOT should request the participation of each cooperating agency as early as possible, typically before the beginning of formal scoping.

According to CEQ regulations, federal agencies with jurisdiction must accept cooperating agency status. FHWA can accept an agency’s declining to be a cooperating agency if the agency’s written response to the request states that its NEPA regulations do not require a separate EIS in conjunction with the proposed FHWA action.

If a federal agency that has legal jurisdiction refuses to be a cooperating agency, notify the FHWA regional and WSDOT Environmental Services Office.

**Table 410-1: Potential Cooperating Agencies**

<b>Agency</b>	<b>Jurisdiction</b>
U.S. Army Corps of Engineers	Section 10 and Section 404 Permits.
U.S. Coast Guard	Bridge Permits.
Environmental Protection Agency (USEPA)	Sole Source Aquifers, Hazardous Waste Site.
National Park Service	Properties funded under Land and Water Conservation Fund Act 6(f).
U.S. Fish & Wildlife Service (USFWS)	Areas funded under various fish and wildlife related grant programs or projects affecting endangered species.
Federal Transit Administration (FTA)	Transit and rail funding.
Rural Electrification Administration (REA)	Relocation of utilities constructed or assisted with REA loans.
Federal Agency Land Manager: National Park Service USFWS Bureau of Land Management U.S. Forest Service Department of Defense General Services Administration	Land transfer from: National Park System National Wildlife Refuge Public Lands National Forest System Military Facilities Federal Buildings
U.S. Fish & Wildlife Service NOAA Fisheries Washington Dept. of Natural Resources Washington Dept. of Ecology Washington Dept. of Fish and Wildlife	Fish and wildlife natural habitat, wetlands, stream relocations, estuaries.
Office of Archaeology & Historic Preservation	Historic, cultural, and archaeological sites.
Environmental Protection Agency	Water supply, air quality.
Federal Emergency Management Agency	Regulatory floodway.
Tribal Governments	Agency with expertise or jurisdiction.
Washington State Agencies	Agency with expertise or jurisdiction.
City/County Governments	Shorelines, Floodplains, Critical Area Ordinances, Growth Management Act issues.

**(b) How to Request Participation**

FHWA sends a written request to federal agencies, asking them to become a cooperating agency. WSDOT invites state, regional and local agencies. The agency responds in writing, either accepting or declining the opportunity. Both letters should be retained in the project file; copies should be sent to the Environmental Services Office.

The Signatory Agency Committee agreement describes procedures applicable to all WSDOT projects requiring a Corps of Engineers individual Section 404 or Section 10 permit and FHWA action on a NEPA EIS. See [Section 411.06\(4\)](#) for details.

**(c) Levels of Involvement**

The level of involvement by the cooperating agency varies. For some projects, it is merely a review function. In others, the cooperating agency may perform some of the specialty studies or help prepare documents. Normally, the lead agency pays for studies carried out by the cooperating agency.

FHWA, WSDOT, and the cooperating agencies should define and agree on roles and expectations at the beginning of the project, for example specific schedules for coordinating the review of preliminary documents.

FHWA and WSDOT should make every reasonable effort to assist agencies in meeting deadlines. Nevertheless, cooperating agencies should be made aware that failure to reasonably adhere to project schedules could result in their agency concerns and comments not being incorporated in the documents.

**(d) When WSDOT Could Become a Cooperating Agency**

Other agencies may ask WSDOT to become a cooperating agency. This could occur on projects when a landholding agency, such as the U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, or a tribal government, proposes a project that could impact WSDOT facilities. County and municipal transportation projects could also involve WSDOT as a cooperating agency.

**(3) FHWA and Other Federal Oversight Agencies**

FHWA is the lead agency under NEPA as the federal agency responsible for funding and approving most highway projects. FHWA directly funds most WSDOT projects and funds many local government projects through WSDOT.

Federal lead agencies for other transportation modes are:

**Ferries** – Corps of Engineers (Corps)

**Mass transit** – Federal Transit Administration (FTA)

**Aviation** – Federal Aviation Administration (FAA)

**Navigable waters** – United States Coast Guard (USCG)

**Rail** – Federal Railroad Administration (FRA)

These agencies may have different regulations to implement NEPA, so advance coordination (early and often) is imperative when developing environmental documents with co-lead federal agencies. For example, the FTA does not recognize programmatic 4(f) statements unless it adopts the FHWA policy on this issue on an individual project basis.

**(4) Tribal Participation**

Tribes can be involved in three capacities under NEPA: as cooperating agencies (with expertise and/or jurisdiction), as consulting party and/or as affected community. The project team must determine which tribes it will need to consult with for natural resources and cultural resources. In some cases, you may not consult with a tribe on both resource issues.

- For natural resource consultation, project teams should review the “Usual and Accustomed” (U&A) Maps available through the Environmental Services Tribal Liaison. These maps display areas where a tribe has court affirmed treaty reserved rights. In some cases, it may be appropriate to seek guidance from the Attorney General’s Office on the exact boundaries of U&A areas.
- For cultural resources consultation, project teams should review the “Area of Interest” maps available through the WSDOT Environmental Services Tribal Liaison. Identifying tribes for cultural resources

consultation is governed by the Section 106 regulations of the Natural Resources Preservation Act.

Project consultation with Indian Tribes is called for in the WSDOT 2003 *Centennial Accord Plan* developed to implement the WSDOT February 19, 2003 Executive Order E1025.00. It is expected that projects will follow the WSDOT *Centennial Accord Plan* when developing and distributing environmental documents for formal external review.

The following link may be used to access the WSDOT *Centennial Accord Plan*.

 [http://www.wsdot.wa.gov/tribal/centennial\\_accord.htm](http://www.wsdot.wa.gov/tribal/centennial_accord.htm)

**(5) WSDOT Roles and Responsibilities**

**(a) Environmental Services Office (ESO)**

The ESO supports the Regional Offices and Modes and develops policies and programs and initiatives.

The Director of Environmental Services is the Responsible Official for all NEPA EISs and EAs and all SEPA EISs. For all other NEPA and SEPA documents, the Responsible Official is the Regional Environmental Manager. This applies to all projects where WSDOT is the lead agency, including ferry and rail projects.

(Note: As of March 2005 the 1986 WSDOT SEPA WAC (Chapter 468-12 WAC) is in the process of being updated. The information presented here regarding designation of the WSDOT Responsible official will be updated upon formal adoption by WSDOT of revisions to the 1986 WSDOT SEPA WAC.)

ESO Compliance Branch staff reviews NEPA EISs and EAs, SEPA EISs, and Section 4(f) environmental documents prepared by Regional Offices and Modes before they are submitted for approval by the Director of Environmental Services and the FHWA or other federal oversight agency. ESO staff also review environmental documents prepared by local governments when WSDOT is the co-lead agency, following review by the WSDOT Highways and Local Programs Office.

The ESO Compliance Branch staff must be contacted at least 45 days before the meeting with the Director of Environmental Services to obtain formal signature approval. Please refer to **Exhibit 411-2** for the standard briefing agenda to be followed when requesting approval from the Director of Environmental Services.

**(b) Highways and Local Programs Office**

The Highways and Local Programs Office oversees the pass-through of federal funds from FHWA and other federal sources to cities and counties. Prior to ESO review, the office reviews NEPA environmental documents submitted by local governments for approval by FHWA. WSDOT's *Local Agency Guidelines* (M 36-63) provides more details on NEPA and SEPA procedures for WSDOT and local governments.

(c) **WSDOT Regional Offices**

WSDOT Regional Environmental Managers act as the Responsible Official for approving SEPA Determinations of Non- Significance (including Mitigated DNSs), NEPA Categorical Exclusions (CEs), and Documented CE (DCEs).

(d) **WSDOT Modes**

For aviation, ferry, and rail projects, the director of the sponsoring WSDOT Mode acts as the Responsible Official for approving SEPA DNSs (including Mitigated DNSs) and NEPA CE and DCEs.

(6) **Ecology**

The Implementing Agreement between WSDOT and Ecology Concerning Adoption of NEPA Documented Categorical Exclusions, approved June 20, 1996, states: “Ecology concurs that the adoption of a NEPA documented categorical exclusion (DCE) under the Federal Highway Administration’s NEPA implementing regulation, 23 CFR 771.117 is allowable under the SEPA Rules in lieu of completing a SEPA checklist, provided the requirements of WAC 197-11-600 and 197-11-630 are met. Ecology will prepare a notice for the *SEPA Register* notifying other agencies and the public of Ecology’s interpretation that an adoption of a NEPA documented categorical exclusion is allowable under SEPA Rules. Ecology will review and may provide comments, if appropriate, during the 15-day public/agency comment period for each proposed project for which adoption of a DCE is planned to comply with SEPA.” This agreement is online at:

 <http://www.wsdot.wa.gov/environment/compliance/agreements.htm>

(7) **Local Governments**

For local government transportation projects receiving federal aid, cities, counties, and special districts such as a sewer, water, school and port districts are in the role of “proponent.” WSDOT serves as the co-lead agency with FHWA for NEPA purposes, through its Highways and Local Programs office. Local projects involving federal permits, federal lands, or federal funding are also categorized Class I, II, or III. Whether or not federal funds are involved, the local government is generally the lead agency for SEPA purposes. For detailed procedures, see the *Local Agency Guidelines* manual (M 36-63).

WSDOT generally is SEPA lead agency for its own projects. In practice, this means that in evaluating permits, the local government entity cannot require an environmental review process in addition to the one WSDOT decides to undertake, but it can require supplemental SEPA review if the agency’s comments on a DEIS were not addressed (WAC 197-11-600(3)). For example, a local government should not issue its own SEPA threshold determinations unless it is assuming lead agency responsibility as provided in WAC 197-11-948.

If a local entity has permit authority, it may add conditions to a project using its own authority. A local agency also has SEPA supplemental authority and can condition or deny a license to mitigate impacts identified in a SEPA document (WAC 197-11-660). However, a local government or other agency cannot impose conditions disproportionate or unrelated to the impact. The basis for the condition comes from amendments to the Growth Management Act (GMA),

specifically, the Essential Public Facilities (EPF) sections, which allow a local authority to condition, but not prevent, a subregional or regional project. The EPF process and adoption must be articulated in an enacted policy or ordinance. The condition must be reasonable and capable of being accomplished under SEPA itself and reasonably proportionate to the identified impact. Most local governments combine their adopted EPF process with SEPA. See [Section 451.02](#) for more on the GMA and EPF.

**(8) *Procedures and Requirements for Establishing NEPA EIS and EA Negotiated Timeframes***

A February 23, 2005 letter from the FHWA to WSDOT documents agreement between WSDOT staff and the FHWA Washington Division Office on WSDOT's plan of action to improve the process for developing NEPA schedules and meet the FHWA Headquarters requirement that all Environmental Assessments (EAs) and Environmental Impact Statements (EISs) establish a negotiated timeframe in consultation with the project stakeholders. (e.g., resource agencies, local agencies, Tribes).

WSDOT's Environmental Services Office (ESO) and Highways & Local Programs (H&LP) will ensure that the following steps are taken on all EAs and EISs that have been started since October 1, 2003.

1. The project agency scoping meeting invitation or scoping notice sent to all identified project stakeholders will include a project schedule consisting of at least the following milestones:
  - a. For EAs:
    - Discipline Reports Circulated (if applicable)
    - Preliminary Environmental Assessment
    - Environmental Assessment
    - Finding of No Significant Impact (FONSI)
  - b. For EISs:
    - Discipline Reports Circulated
    - Preliminary Draft EIS
    - Draft EIS
    - Preliminary Final EIS
    - Final EIS
    - Record of Decision (ROD)

Other schedule information may be included if available, such as anticipated review times for various reviewers, SAC Concurrence Points, or any other important milestones.

2. The scoping notice will include a request for feedback from the agencies about the schedule. It should say something like, "If you have any comments, concerns, or suggestions about this project schedule please contact the Project Manager."

The scoping notice may also include language that requests a response from the agencies as to whether or not they are interested in reviewing discipline reports and/or preliminary documents.

3. If an agency scoping meeting is held, include an agenda item to discuss the schedule and seek input from the stakeholders.

4. If comments about the project schedule are received, the Project Manager or H&LP Environmental Manager, as applicable, will discuss them with the commenting stakeholder and determine, in consultation with FHWA, whether changes to the schedule are warranted.
5. Once the scoping period is over and any comments from stakeholders or FHWA have been resolved, the Project Manager or H&LP Environmental Manager, as applicable, will notify the WSDOT Environmental Documentation Program (Attn: Phil KauzLoric), who will in turn notify the FHWA Environmental Program Manager of the length of the negotiated timeframe, in months. This information will be tracked in the FHWA Environmental Documents Tracking System.

As projects are completed, FHWA's Washington Division Office will begin reporting to FHWA HQ the percentage of our WSDOT projects that are completed within their negotiated timeframe. FHWA has established a national goal of 90% of projects meeting the negotiated timeframes by 2007.

In addition to these project-by-project efforts, FHWA is supportive of WSDOT's efforts to develop and maintain a statewide NEPA project management workload and tracking system. As demonstrated by use of we have seen in the WSDOT ESA Tracking Sheets, these systems can be very effective in tools to improving resource agency coordination and project delivery.

Any future modification of this procedure will be coordinated between FHWA Washington Division and WSDOT.

Any questions of the FHWA should be directed to Sharon Love at 360-753-9558 or Sharon.love@fhwa.dot.gov.

**(9) Partner Confirmation Meeting**

This meeting occurs early in the project environmental process for both EA and EIS documents. It provides a road map for the environmental process. Advance consultation with the lead federal agency or agencies provides direction on which agencies might be invited as attendees to assist in setting direction for the project environmental documentation.

- Identify lead and co-lead agencies.
- Identify cooperating agencies.
- Confirm the level of environmental documentation noted in the WSDOT Environmental Classification/Review Summary (ECS/ERS).
- Show graphically the approximate study area that is under consideration.
- Determine the applicability of the Section 106 tribal consultation process or if the Section 106 FHWA Programmatic Agreement (PA) makes the proposal exempt. If not exempt under the PA, present for discussion a suggested list of tribes and a map of tribal "Usual and Accustomed Areas."
- Present an early version of the project purpose and need (from ERS) for review and comment.
- For transportation, air, and noise studies, establish the "existing year," "year of opening," and "design year" (sometimes referred to as horizon year).
- Present a preliminary project schedule based on the proposed level of environmental documentation.

- Establish Negotiated Timeframes for completing the EA or EIS. See [Section 410.05\(8\)](#) for information on establishing these timeframes.

## 410.06 Public Involvement

Public involvement is a NEPA and SEPA requirement for all EISs and to a lesser degree EAs and SEPA DNSs. It is an important part of project development, ensuring that public input is considered in the decision process. For regulatory guidance, see 23 CFR 771.111 and WAC 197-11 Part 5.

Public notice procedures are an important part of the NEPA/SEPA process. Often the only way the public, interested organizations, and agencies find out about a project is through the public notice. Lack of public notice can be justification for appealing the procedural aspects of SEPA. If public notice is required for a government action such as a permit or license, the NEPA/SEPA notice and permit notice should be combined if possible

This section describes the key points at which public involvement is required or recommended for each project class (CE, EA, or EIS). For details on public notice requirements for CEs, EAs, EISs and Section 4(f) Evaluations, see [Section 411.04](#) through [Section 411.09](#) and [Section 411.12](#).

FHWA guidance is online at:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment, then Public Involvement.

Or by direct link:

 <http://www.fhwa.dot.gov/environment/pubinv2.htm>

*Public Involvement in Transportation Decision-Making* (September 1996), prepared for FTA and FHWA, Publication No. FHWA-PD-96-031, is online at:

 <http://www.fhwa.dot.gov/reports/pittd/cover.htm>

For other references in FHWA's Environmental Guidebook, see:

 <http://www.fhwa.dot.gov/>

Click on FHWA Programs, then Environment, then Environmental Guidebook, then Public Involvement.

Or by direct link:

 <http://www.fhwa.dot.gov/environment/guidebook/chapters/v2ch13.htm>

### (1) *Timing of Public Involvement*

#### (a) *Class II (CEs)*

There are no public notice requirements for CEs. However, most projects classified as categorically excluded under NEPA will need to be examined to determine if they are also exempt under SEPA. If not exempt under SEPA, the project often requires the distribution of a threshold determination (DS or DNS) and Environmental Checklist, associated public comment period, and public notice published in an area newspaper. (See [Section 411.04](#) for details.) A typical impact associated with a

routine excluded and/or exempt project could include a short-term delay or nuisance during construction. The main goal is to inform the public when the work will occur and how to avoid problems.

News releases and other public contact should begin shortly before construction. These communications should continue as needed during the construction period.

**(b) Class III (EAs)**

Non-routine projects have a potential for environmental impacts and/or controversy. These projects typically require some type of environmental analysis. Negative impacts can usually be mitigated reasonably easily.

Non-routine projects can often be classified as a documented NEPA-CE, NEPA-EA and mitigated SEPA-DNS. Examples include new truck-climbing lanes, turning lanes, or intersections.

Early public involvement allows interested agencies, the public, and WSDOT to resolve problems with a minimum of conflict. Mutual feedback fosters cooperation. Public concerns are addressed and WSDOT builds its project on schedule.

If public concerns are ignored, environmental documentation requirements usually increase. This can cause unnecessary hard feelings, project delays, and cost overruns.

See [Section 411.05](#) for details on public notice requirements for EAs (NEPA) and DNSs (SEPA).

**(c) Class I Projects (EISs)**

For projects requiring an EIS, a public involvement plan should be prepared as part of the scoping process as soon as possible after a design concept is developed (see [Section 410.06\(3\)](#)).

Depending on the project complexity, public involvement should continue throughout project development. The public and agencies should be given feedback regarding WSDOT's response to their suggestions. For projects requiring an EIS, minimum public involvement should occur as follows:

1. When a scoping meeting or open house is held.
2. Before DEIS studies begin.
3. Before the DEIS if formalized.
4. Notice of Availability of Draft EIS and Notice of Hearing.
5. After the review of comments on the DEIS and preparation of draft responses and project revisions.
6. If any major project change is proposed.
7. Notice of Availability of Final EIS.
8. Notification of the Record of Decision (ROD) or any change to the ROD.

(2) **Benefits of Effective Public Involvement**

Both NEPA and SEPA cite agency and public involvement as essential parts of the development process for proposed actions. The *SEPA Handbook* notes that "...public involvement has been found to be the key to preventing public suspicion of the process." Effective public involvement can minimize opposition to a project. If the first public contact does not occur until all the design details are formalized, significant opposition may appear at the public hearing. This approach can result in costly project modification and delays and even cancellation of a project.

Public involvement is best viewed as an opportunity. Proper communication of the need for a project can often turn public apathy or opposition into support. Sometimes suggestions submitted by the public stimulate innovative problem solving. Public involvement can result in a better project when comments are viewed with an open mind. Commentors often offer local knowledge that would otherwise not be considered.

The public involvement process outlined below focuses on the specific requirements of various environmental laws and regulations in conjunction with WSDOT's policies. For more general information and ideas about public involvement methods and strategies, see WSDOT's *Design Manual* (M 22-01), Section 210.

FHWA provides online guidance on Public Involvement in Transportation Decision-Making (September 1996), prepared for FTA and FHWA, Publication No. FHWA-PD-96-031, online at:

 <http://www.fhwa.dot.gov/reports/pittd/cover.htm>

(3) **Public Involvement Plan**

The Public Involvement Plan is the basic element of the public involvement process. The plan must identify all proposed public involvement methods. For ideas, see WSDOT's in the *Design Manual*, Section 210. A sample Public Involvement Plan is attached as **Exhibit 410-1**.

Regional Offices and Divisions develop the public involvement plan for WSDOT projects. For projects requiring an EIS, a public involvement plan is required as part of the study plan. (For all other projects, the Region may consult the Access and Hearings Unit for assistance or concurrence.)

The plan should include the following major elements:

- Need for public education and the best way(s) to accomplish this.
- Special issues and areas of concern.
- Legal requirements and constraints.
- Project stakeholders and general input to be requested.
- List of proposed involvement activities.
- Special approaches to solicit input of those traditionally under-served by or suffering disproportionate adverse effects of transportation projects (ADA, Environmental Justice, Title VI populations, elderly, and people with limited proficiency in English); see **Chapter 457** and **Chapter 458**.

- Methods to be used in considering comments in the decision-making process, including follow-up procedures.
- Major project decision milestones and schedule for each task, keyed to the environmental process schedule, if applicable.
- Program for monitoring, evaluating, and restructuring the plan when necessary.
- Personnel, time, and funds needed to carry out the plan.
- Process for documentation

The two approaches typically used to solicit input from agencies and local citizens during the design and environmental process are:

- Exchange of information to and from the general public, businesses, citizen groups, public agencies, public officials, and tribes.
- Community meetings, open houses, and EIS (EA)/design hearings.

The public to be involved can include any or all of the following who could be directly or indirectly affected by the project:

- Staff and elected officials of local governments.
- Other state and federal agencies and officials.
- Tribal government representatives.
- Adjacent property owners and tenants.
- Adjacent billboard owners and clients.
- Community groups (clubs, civic groups, churches).
- Special interest groups.
- Environmental justice stakeholders (low-income and minority groups).
- Service providers (emergency, utility).
- Others expressing interest.
- Others known to be affected.
- General public.

WSDOT recognizes the role of local, state, and federal staff and elected officials as active sponsors of proposed projects who may effectively assist in developing and implementing the public involvement plan. Early and continued contact with these resources is a key to the success of the project.

#### **(4) Circulation of Documents**

NEPA and SEPA processes require public notification and circulation of documents as a method for consulting with other agencies, tribes, and the public to ensure that all potential impacts of a proposed project are identified, and that everyone understands the proposal and has a chance to express concerns. See [Section 411.05\(2\)](#) and [Section 411.07\(6\)](#) for details on distribution of EAs and EISs.

## **410.07 Exhibits**

*[Exhibit 410-1 – Sample Public Involvement Plan.](#)*

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# ***Sample Public Involvement Plan***

## **Public Involvement Plan**

The public involvement plan for the SR 10, Johnson Creek Bridge to Glacier Road, project will use three basic approaches to include agencies and local citizens in the design process:

- 1) dissemination of information to the general public, businesses, citizen groups, and to public agencies and officials;
- 2) several community meetings and workshops; and
- 3) a formal design/environmental hearing.

## ***Informational Program***

The basic purpose of the informational element of the public involvement plan is to publicize the planning and decision-making process, to inform the public of upcoming public meetings and workshops, to present major issues and events, to report on input from past public meetings, to inform the public of the purpose of the study, and to publicize the process used to evaluate project alternatives. The Informational Program will take four primary forms:

- Newsletters will be distributed to those people who have expressed interest in being advised of the project's progress. A mailing list will be maintained with addresses of all potentially affected residents, businesses, public officials, and all agencies with a potential interest in the project.
- Flyers will be distributed to businesses and displayed publicly within the project corridor.
- News releases will be distributed to newspapers, community groups, and public agencies.
- Agencies and questionnaires will be distributed during public meetings.

The flyers and newspaper notices will give basic information; such as meeting dates, times, and places. The major portion of the data to be publicized will occur in the newsletters, handouts, and press releases. These will contain information explaining the purpose of the project, the public input process, major issues, proposed alternatives, alternative evaluation criteria, and project schedules.

Another phase of the information process will be incorporated in community meetings being held during the design process. Informational packages combining questionnaires, meeting format information, and handouts will be distributed to citizens attending public meetings.

## ***Community Meetings***

Community meetings, the second element of the public involvement program, will be held to inform the public during the design process and, equally important, to obtain public views, opinions, and attitudes regarding the proposed project.

Three informal open houses have been scheduled to coincide with points during the process when there is a need to inform the public of the project status and to solicit meaningful public input.

***Open House No. 1*** the public scoping meeting, was held on January 17, 1985. The purpose of the meeting was to introduce the project to the public, identify issues to be considered in preparation of the EIS, and receive public input relative to possible construction alternatives.

***Open House No. 2*** has tentatively been scheduled for August 10, 1985. The primary purpose of the meeting will be to describe the screening criteria used to select alternatives of be studied in the Draft EIS, identify potential significant impacts that may be associated with each alternative, and receive input regarding the project as a whole.

***Open House No. 3*** has tentatively been scheduled for May 18, 1986. The purpose of the meeting will be to present the preferred alternative, discuss evaluation criteria, and solicit public comment.

All of the community meetings will use an informal format suitable to the information being presented. Guests will be asked to sign in. Handouts containing project information and a questionnaire will be given out at this time.

Graphic display materials for each open house will include:

- A color aerial mosaic.
- Proposed alternatives.
- Alternative evaluation criteria.
- Schedule information.

Other displays appropriate to the particular meeting and any other information considered relevant by the IDT will also be presented or available.

## ***Notification***

Flyers will be distributed to affected areas. These flyers will be posted in conspicuous locations along the proposed route and in suitable businesses. Time frame: two weeks prior to each open house.

Appropriate legal notices and advertisements will be placed in selected newspapers announcing the time, location, and purpose for each open house or meeting. This same information will be included on the flyer. If appropriate, maps or other small graphics may be included in these publications. Time frame: two weeks prior to each open house or meeting.

Press releases will be distributed to local newspapers concerning upcoming open houses or meetings. The following information will be included:

- Time and location.
- A review of the purpose of the study.
- A list of study participants.
- A simplified project schedule indicating the current project status.
- A review of major issues.
- A report of input received at the previous open house or meeting.
- A discussion of project alternatives
- A review of the process used to evaluate alternatives.

Letters, including a copy of the press release, will be sent to state legislators, the mayor of Fall City, and the Jefferson County Commission, inviting them to attend. Time frame: 17 days prior to each meeting.

A newsletter will follow each open house. The newsletter will summarize what was presented, comments received, and the direction being taken concerning the project. This newsletter will be distributed to all interested citizens and local officials. Time frame: Approximately two to four weeks following each open house or meeting.

### ***Project Hearing***

The final element of the public involvement plan, a formal design/environmental hearing, will be held not less than 30 days following circulation of the Draft EIS. The purpose of the hearing will be to formally present design alternatives and their associated environmental impacts to the public for comments. The hearing process will follow procedures outlined in Section 208 of the *Design Manual*. Included will be preparation of a prehearing packet, hearing notice, and legislative/news media capsule project descriptions for OSC review.

The project hearing will consist of an open house followed by a transcribed formal hearing. The format and agenda will be finalized prior to submittal of the prehearing packet, 60 days before the scheduled hearing date.

The project schedule includes key public involvement dates.